SEXUAL ASSAULT AND SENTENCING

A SURVEY OF CASES BEFORE
THE COURTS OF THE
NORTHWEST TERRITORIES
DURING THE PERIOD
JANUARY 1, 1988 THROUGH
DECEMBER 31, 1989

September, 1991

92-00730/

Additional Copies of this report
may be obtained from:

Director, Policy & Planning Division
Department of Justice
Government of the Northwest Territories
Yellowknife, N.W.T.
X1A 2L9
(403) 920-6418

Executive Director
Arctic Public Legal Education
and Information Society
P.O. Box 2706
Yellowknife, N.W.T.
X1A 2R1
(403) 920-2360

TABLE OF CONTENTS

Page

1.0 PURPOSE OF THE REPORT 1

2.0 HIGHLIGHTS 2

3.0 WHAT IS "SEXUAL ASSAULT?" 3

- Aggravated Sexual Assault 3
- Sexual Assault With a Weapon, Threats to a Third Party or Causing Bodily Harm 3
- Sexual Assault 3

4.0 WHAT IS "SENTENCING?" 4

4.1 Role of the Defence and Prosecution 4
4.2 Typical Mitigating Factors 5

- Plea of guilty 5
- Remorse 5
- Disclosure 5
- Spontaneous act 5
- First offence 5
- Personal characteristics of the offender 5
- Alcohol 5
- Time in custody 6
- Totality 6

4.3 Typical Aggravating Factors 6

- Premeditation 6
- Violence, degrading or dehumanizing behaviour 6
- Vulnerability of the complainant 6
- Breach of trust 6
- Effect on the complainant 6

Page

4.4 Role of the Court of Appeal 6
4.5 "Major Sexual Assaults" 7

5.0 METHODOLOGY AND TERMINOLOGY 8

6.0 QUALIFICATIONS AND LIMITATIONS 10

7.0 OBSERVATIONS 11

7.1 The Typical Sexual Assault in the Northwest Territories 11
7.2 The Accused 11
7.3 The Complainant 11
7.4 The Assault 12
7.5 The Court Proceedings 12

8.0 STATISTICAL TABLES 14

8.1 Regional and Community Incidence of Assault Offences 15
8.2 Indication of Alcohol Use 16
8.3 Marital Status, Accused and Complainant 17
8.4 Employment, Accused and Complainant 18
8.5 Education, Accused and Complainant 19
8.6 Past Victimization, Accused and Complainant 20
8.7 Age of Complainants 21
8.8 Time of Day of Incidents 22
8.9 Location of Assaults 23
8.10 Activities of Complainants 24
8.11 Incidence of Threats to Complainants 25
8.12 Typical Threats to Complainants 26
8.13 Relationship of Accused to Complainant 27
8.14 Physical Injuries to Complainants 28
8.15 Charges by Criminal Code Section 29
8.16 Intercourse, Attempts and Touchings 30
8.17 Multiple Offender Assaults 31
8.18 Overt Responses of Complainants 32

Page

8.19 Trauma 33
8.20 Arrest and Bail. 34
8.21 Pleas 35
8.22 Not Guilty Pleas 36
8.23 Distribution of Summary and Indictable Proceedings 37
8.24 Court Distribution 38
8.25 Defences 39
8.26 Previous Convictions 40
8.27 Principles of Sentencing 41
8.28 Aggravating Factors 42
8.29 Mitigating Factors 43
8.30 Range of Sentences (indictable) 44
8.31 Range of Sentences (summary) 45
8.32 Rate of Change of Sentences on Appeal 46

BIBLIOGRAPHY 47

DATA COLLECTION FORM ..... Appendix A

1.0 PURPOSE OF THE REPORT

The purpose of this report is to provide information about sexual assault cases and sentencing of sexual assault offenders, in the Northwest Territories, to legal professionals, policy makers, interest groups, and members of the public.

The research was proposed by the Criminal Law Subsection of the NWT Branch of the Canadian Bar Association, and the Department of Justice, Government of the Northwest Territories. The report was prepared under the general direction of a sexual assault Research Advisory Group, consisting of representatives of the Canadian Bar Association, the NWT Department of Justice, the Status of Women Council of the NWT, the Mackenzie Courtworkers, the Arctic Public Legal Education and Information Society, the NWT branch of the National Association of Women and the Law, Allison McAteer House, the RCMP and the regional office of the Department of Justice, (Canada). The Native Women's Association and Pauktuutit (the Inuit Women's Association) were advised that the study was taking place and kept informed as it progressed.

The principal researcher for the project was James R. Posynick. The assistant researcher was Pearl Benyk.

Funding for the project was provided equally by the NWT Law Foundation and the Government of the Northwest Territories Department of Justice. Justice also provided office space, computer equipment and computer expertise for the project. The regional office of the Department of Justice, (Canada) provided complete criminal prosecution file access to the researchers.

We wish to acknowledge the contribution of the court registries and court library staff who consistently provided patient cooperation and assistance when it was needed most.

2.0 HIGHLIGHTS

Of the sexual assault cases studied for this report:

- 90% of the assaults were committed by someone known to the victim (family, friend, acquaintance, babysitter, former spouse or boyfriend) (table 13)
- 29% of these were members of the victim's family (immediate and non-immediate) (table 13)
- 29% of sexual assaults included acts of intercourse (table 16)
- No actual use or threatened use of firearms was involved in any of the cases surveyed (table 11)
- Physical injury to the victim occurred in at least 25% of the assaults (table 14)
- At least 50% of the sexual assaults surveyed occurred in the home of the victim or accused; at least 25% occurred in the victim's own bedroom (table 9)
- Although in 205 of 270 cases this factor was unknown, where this information was available, 80% of the complainants had been sexually abused previously (table 6)
- Although in 205 of 270 cases this factor was unknown, where this information was available, about 50% of the offenders had been victims of physical violence, parental alcohol abuse or sexual abuse themselves (table 6)
- Offenders had consumed alcohol prior to the occurrence of the offence in at least 50% of the cases and were intoxicated at the time of the assault in more than 25% of the cases (table 2)
- In one out of three cases the accused had a prior conviction for a crime of violence (table 26)
- Those at highest risk of sexual assault were between the ages of 13 and 18 years; the group at next highest risk were those between 7 and 12 years of age (table 7)
- The accused pleaded guilty in more than half of the cases (table 21)
- The average sentence for adult offenders prosecuted by indictment was a jail term of 15.7 months (table 30)

3.0 SEXUAL ASSAULT PROVISIONS OF THE CRIMINAL CODE

Sexual assault occurs when someone, for a sexual purpose, intentionally applies force, attempts to apply force or threatens to apply force to another person without the consent of that person. People who assist or encourage sexual assault may also be criminally responsible.

Conduct ranging from a "stolen kiss" to coercion with a weapon resulting in serious bodily injury may be criminal conduct within the meaning of "sexual assault" in the Criminal Code[1]. The Code divides sexual assault into three general categories:

AGGRAVATED SEXUAL ASSAULT: (Section 273) - An indictable offence which includes those sexual assaults which result in wounding, maiming or disfigurement or where the life of the complainant (victim) is endangered. The maximum sentence is life imprisonment.

SEXUAL ASSAULT WITH A WEAPON, THREATS TO A THIRD PARTY OR CAUSING BODILY HARM: (Section 272) - An indictable offence which includes those sexual assaults in which a weapon is used, or threatened to be used, or where bodily harm is done to the complainant, or threatened to be done to someone else. The maximum sentence is 14 years imprisonment.

SEXUAL ASSAULT: (Section 271) - Includes all other sexual assaults. The prosecution must choose, based upon a number of factors, including the seriousness of the offence, whether to proceed "summarily", in which case the maximum sentence that can be imposed by the court is 6 months in jail or a $2,000 fine or both, or to proceed "by indictment", in which case the maximum sentence is 10 years imprisonment.

Where the offence is proceeded with by indictment, the accused must choose which court to be tried in: the Territorial Court, or the Supreme Court by a judge alone, or by a judge and jury.

The choice of a Supreme Court trial gives the accused an opportunity to preview the prosecution's evidence before trial at a Preliminary Inquiry. A Territorial Court Judge presides over the Preliminary Inquiry and decides whether the evidence adduced by the prosecution (usually that of the complainant/victim in a sexual assault hearing) is sufficient to warrant a trial. The accused may choose to waive the Preliminary Inquiry and proceed directly to trial in the Supreme Court, although this is not usually done.

---

[1] Assault is defined in Section 265 of the Criminal Code and the categories of sexual assault are contained in Sections 271, 272 and 273.

4.0 SENTENCING

Sentencing is the process whereby a judge imposes a punishment on an offender who either pleads guilty, or having pleaded not guilty, was found guilty after a trial. Because there are so many different ways in which an offence can be committed, the law provides a wide range of penalties. The judge is required to consider all of the circumstances of the offence, the personal circumstances of the offender and the impact on the complainant, in determining the appropriate penalty within the range provided for the offence. The weight given to each of these factors is also a consideration for the sentencing judge.

The judge does not investigate the offence but rather relies on counsel for the Crown and the accused to place the evidence before the court.

The evidence at sentencing may include the evidence of witnesses who were involved in or witnessed the events, character witnesses of the accused, psychiatric or psychological assessments of the accused or the complainant, a victim impact statement, and pre-sentence reports prepared by a social worker dealing with an offender's background and his community involvement.

Usually where there is a guilty plea, counsel are able to agree what the facts were, based on what Crown counsel is able to prove, making it unnecessary for the witnesses to testify. Where counsel can not agree what happened, Crown counsel is required to prove beyond reasonable doubt that its version is correct. Otherwise the Court is required to accept the accused's version. In such cases, the witnesses must tell the court, under oath, what happened.

Sometimes counsel are able to agree upon a sentence or a range of sentences, in which case they may make a joint submission to the judge for the imposition of that sentence. Although the judge will usually give great weight to a joint submission, the judge is not bound to impose the sentence suggested, if he or she decides that it is not appropriate.

In deciding what sentence to impose, the judge considers a number of principles such as protection of the public, deterrence of the offender and others from such conduct, denunciation of the conduct to the public and rehabilitation of the offender.

4.1 Role of the Defence and Prosecution

Both the prosecution and defence counsel are entitled to make submissions to the court before sentence is passed.

Defence counsel, who are duty bound to act in their client's best interests, point out to the judge the facts about the offence and personal circumstances of the accused which support a more lenient sentence ("mitigating factors"). The prosecution may point out those facts which tend to increase the seriousness of the offence ("aggravating factors").

Either counsel may argue against any interpretation of the facts or circumstances unfavourable to their position. They may call evidence to support their submissions at a sentencing hearing.

The judge then considers the submissions of counsel and all of the evidence (from the trial and the sentencing hearing) before the sentence.

4.2 Typical Mitigating Factors

Plea of guilty: May indicate that the offender is remorseful and forego the need for the complainant to give evidence at a trial.

Remorse: A demonstration of compassion for the complainant may be viewed as a step toward rehabilitation. On the other hand, outpourings of self-pity and regret based on fear of the consequences or simply to ingratiate the offender to the court, may be disregarded. An apparent lack of remorse may be viewed as an aggravating factor.

Disclosure: Co-operation with the investigating police, forthrightness in a confession and the completeness of information revealed to the authorities may be viewed as an acceptance of responsibility, a step toward rehabilitation.

Spontaneous act: Unplanned acts are generally less blameworthy than premeditated ones. However, spontaneity might also be viewed as opportunistic, predatory or casual and therefore might be considered as aggravating rather than mitigating in some circumstances.

First offence: Offenders of previous good character are presumed to suffer severe personal consequences (e.g. loss of friends, job, personal stature in the community) which serves as partial punishment.

Personal characteristics of the offender: The age of the offender, his employment, number and type of dependents, medical condition, education, sophistication and lifestyle may weigh in favour of a less harsh punishment.

Alcohol: While intoxication affords no defence to a charge of sexual assault, alcohol use which is out of character for the offender may reinforce the submission that the offender will not or is unlikely to re-offend. On the other hand, the court may view the use of alcohol as a means of bolstering the offender's courage to commit the act.

Time in custody: Time spent in custody before the trial or sentence is not deducted from the jail term imposed by the judge. The judge may take such time into account when imposing the sentence. In fact, extra credit may be given for the time spent in custody which is considered "hard time" because it is time spent away from the general inmate population and without access to rehabilitative programs.

Totality: When an offender is sentenced for more than one offence at the same time, the sentencing judge must consider the total effect of all sentences, including those the offender might already be serving.

4.3 Typical Aggravating Factors

Premeditation: A planned, calculated assault may be more blameworthy and serious than a spontaneous one.

Violence, degrading or dehumanizing behaviour: If the assault is particularly violent or the conduct was degrading or dehumanizing (e.g. multiple assaults or recurring ones), the seriousness of the offence is heightened.

Vulnerability of the complainant: The aged, the very young, the handicapped or incapacitated may be viewed as needing greater protection and the severity of sentence may reflect the need for denunciation and deterrence.

Breach of trust: Parents, babysitters, child-care workers and other custodians or care-givers who victimize those entrusted to their care are also likely to attract denunciatory and deterrent sentences.

Effect on the complainant: Physical injuries and/or evidence of trauma, particularly evidence of lasting trauma, may be viewed as increasing the seriousness of the offence.

4.4 Role of the Court of Appeal

The fitness of a sexual assault sentence may be appealed to the Northwest Territories Court of Appeal. Decisions of the Court of Appeal are binding upon the lower courts. Consequently judgments issued by the Court of Appeal concerning the application of sentencing principles serve as guidelines for the Territorial and Supreme Courts.

4.5 Major Sexual Assaults

The Court of Appeal of Alberta (the judges of which are also members of the Court of Appeal of the Northwest Territories) in R. v Sandercock[2] stated that the approach to sentencing with respect to sexual assault offenders is not to be a "tariff" or minimum sentence approach. Rather, the Court adopted a "starting point" approach based on what it viewed as "typical cases".

The first such typical case is one in which "a person, by violence or threat of violence, forces an adult complainant to submit to sexual activity of a sort or intensity such that a reasonable person would know beforehand that the complainant likely would suffer lasting emotional or psychological injury, whether or not physical injury occurs." The conduct of the offender is so contemptuous of the feelings and personal integrity of the complainant that psychological or emotional harm is presumed to occur. The court called this a major sexual assault and declared that the primary sentencing consideration in such assaults is denunciation. The starting point is 3 years imprisonment for a major sexual assault committed by an adult first offender of previous good character.

The Court in Sandercock specifically said that provocation based on a woman's attractiveness or attire or a claim of negligence or imprudence of the complainant in providing the offender with the opportunity for the crime were not mitigating factors.

The Northwest Territories Court of Appeal adopted the starting point approach from Sandercock for major sexual assaults. According to that court, aggravating and mitigating factors may be "somewhat modified when applied to northern Canada"[3] particularly where the offender or victim is unsophisticated. In R. v J.N.[4], because the victim and the offender had a grade school education and the offender's community had been exposed to the laws and customs of Canada for some time, the Court did not consider the offender "unsophisticated." The sentence was raised from 90 days intermittent jail (i.e. weekends) to 18 months in jail [5].

[2] 48 Criminal Reports (3d) at 154 (C.A.)

[3] [1986] Northwest Territories Reports at 134

[4] Ibid at p. 128

[5] Ibid at p.131

5.0 METHODOLOGY AND TERMINOLOGY

Data Collection

The primary source of information for this survey was a group of 250 files from the Department of Justice, (Canada) regional office in Yellowknife. These files related to 261 accused persons, 270 complainants and 291 charges. These were all of the available files relating to charges under sections 271, 272, and 273, which were dealt with by the courts or otherwise concluded during the two-year period January 1, 1988 through December 31, 1989.

The files contained reports of the investigating RCMP detachments, witness, complainant and accused statements and a compilation of forms, court documents and correspondence between and among the prosecution, police, defence counsel, government and other relevant agencies, that formed the primary database for the information presented in this report.

A data collection form was developed and used to manually record a potential of 66 separate "features" or categories of information (data). (See attached data sheet, Appendix A) Although 66 features were identified to be recorded about each file, as the research progressed, it became clear that some files did not contain information about some of the features, and therefore statistically significant information about some features could not be derived from the sample.

Since the focus of this report was intended to be sentencing, each form or record created represents information pertaining to one accused (or "offender", used interchangeably in this report). Where there were multiple offences (sexual assaults) by one accused against one victim (or "complainant") only one record was created. Where there was more than one offender charged with the sexual assault of one victim, a record was created for each offender.

Because far less victim-specific information was available from the prosecution files than offender-specific information, the total number of records pertaining to victims, (i.e. those about whom sufficient distinctive information was available - e.g table 7 "age distribution of complainants") is 270. The tables in this report are based on that number. In fact, the prosecution files sometimes mentioned more victims, but gave no information about them.

The records reflect the prosecution file tendency (and that of sentencing judges, for that matter) to group offences of similar or virtually identical fact situations and circumstances. The 250 prosecution files accessed by the researchers dealt with 261 offenders, and gave information about 270 victims, all of which related to 291 sexual assault offences.

Data which was ambiguous or unavailable from any source was recorded on the form in the appropriate space as "unknown" or simply left blank. Where the prosecution files could not supply the sought after data, Supreme Court and Territorial Court files were accessed with the permission of the administration of each court. The Yellowknife Court House Library collection of judgments and sentencing remarks was also sourced.

In each case where a sentence was passed, an effort was made to secure copies of the sentencing remarks made by the judge, short of incurring the expense of paying for the transcription of the verbatim notes belonging to the Office of the Court Reporter.

The researchers attempted to categorize and record significant data in the hope that it might disclose information about sexual assaults and the sentences imposed.

6.0 QUALIFICATIONS AND LIMITATIONS OF THIS STUDY

This study covers only sexual assault offences within sections 271, 272 and 273 of the Criminal Code disposed of in the Northwest Territories courts between January 1, 1988 and December 31, 1989. This study does not cover sexual assaults outside this two year period or offences under other sections of the Criminal Code even though there may be sexual implications to them. In particular this study does not cover offences of gross indecency, sexual interference, sexual exploitation, invitation to sexual touching, or incest.

The researchers were unable to locate 20 of the prosecution's sexual assault files dealt with in the time period in question. These files and their contents may have had a significant impact on the tables in this report. The tables represent a selection of data rather than a complete database.

The focus of the research was to do a factual study with respect to the sentences imposed for sexual assault offences and what factors were most frequently identifiable from the database.

Although efforts were made to record ethnicity of the offender and the complainant, the information in this regard was too incomplete and therefore unreliable to include in this report.

The study was based mainly on prosecution files and in particular the police reports, the witness statements, the prosecution's strategy notes, court documents, and the defence position as interpreted by the Crown. The defence files could not be accessed for reasons of confidentiality. Where available, sentencing transcripts were reviewed and given priority. The transcripts were available in 12.5% of the Territorial Court cases and 87.3% of the Supreme Court cases.

Although the study was intended to be a sentencing study, the researchers collected data for each charge disposed of in the time period in question whether or not they resulted in a guilty verdict. Although there was a not guilty verdict, or the charges were not proceeded with, or the result is unknown in 70 of the 261 cases (see tables 21 and 22), the researchers used the information in the prosecution files for the purposes of this study. Accordingly, in some instances, the frequency and severity of aggravating factors may be overstated and the frequency of mitigating factors may be understated. The report must be read in this light.

7.0 OBSERVATIONS

7.1 The Typical Sexual Assault in the Northwest Territories

Based upon an analysis of the data included in this report, it is possible to construct a typical sexual assault scenario which reflects what happened most frequently in the cases which formed part of this study. The propositions depend completely on the data contained in this report.

7.2 The Accused

The perpetrators of the sexual assaults were almost always males (of 261 records, 253 involved male offenders). Most consumed alcohol before committing the offence (53.63% of accused persons did so and at least 27% were described as intoxicated at the time of the offence).

The accused was usually single (49.8%), unemployed (more than double the known number of employed accused) and had a range of formal education between 0 and grade 8 (72% of files contained educational data). There was about a 50-50 chance that the accused was himself a victim of physical violence, sexual abuse or parental alcohol abuse, although in 205 of 270 cases this information was unknown. In one out of 3 cases, the accused had previous convictions for some form of violent offence (88 of 261 records).

In nearly all cases (90%), the accused was known to the complainant. In fact, he was most often (59% of the time) related by blood or otherwise, or a friend of the family or the complainant herself, or a former or present spouse or boyfriend.

7.3 The Complainant

The complainant was, 9 times out of 10, a female. There was a better than even chance that the complainant was between the ages of seven and eighteen years (54% of all complainants). More than 1/4 of the complainants had consumed alcohol before the offence and about 1 in 5 of the total number were intoxicated at the time of the offence. It should be noted that this study includes both child and adult victims.

The complainant was most often single (74.44%). At least one complainant in 5 had been a victim of past sexual or physical abuse.

7.4 The Assault

Nearly two-thirds of the time, the assault took place in the home of either the accused or the complainant (65.51% including common domiciles). More than 1 out of 4 sexual assaults occurred in the complainant's own bedroom.

The assault was almost always perpetrated by a lone attacker who struck most often between the hours of 1:00 and 7:00 a.m. There is a good chance the complainant was sleeping immediately prior to the assault (36.29%).

Most often, physical force, but no weapon, was used in the assault.

If a weapon was used, it was most often something not designed for use as a weapon, but rather some object within reach of the accused at the time of the assault. 25% of the time, a verbal threat was made and at least 40% of the time it was a threat of personal harm to the complainant.

In almost 1/4 of the cases, there was some physical injury to the complainant ranging from bruising and pulling of hair to lacerations and consequential infections.

More than half of the time, the assault was a sexual touching (59.77%) rather than intercourse (29.11%) or attempted intercourse (7.27%).

The responses of the complainants were wide ranging. The victim was just as likely to fight back or physically resist the assault as to remain passive (see table 18).

7.5 The Court Proceedings

The police were most likely to arrest the accused rather than issue a summons or an appearance notice. About 3/4 of those arrested were released from custody until their trial date.

In about 3/4 of the cases, the prosecution chose to proceed "by indictment" thereby requiring the court to treat the offence as more serious with the potential for greater punishment and with the potential for a preliminary inquiry and a Supreme Court trial by judge alone or judge and jury.

The accused was almost twice as likely to plead guilty (57.85%) to the sexual assault as not guilty. Of those pleading not guilty and going to trial, about half resulted in convictions. At least 60% of all the sexual assaults were dealt with in the Territorial Court.

If a trial took place, the defence was based, in part at least, on a challenge to the credibility of the complainant's evidence.

In passing sentence, the judge often had the principle of deterrence to would-be offenders uppermost in his or her mind. The most common aggravating factor of the offences was that the accused betrayed the complainant's trust. The judge took into consideration the offender's plea of guilty in mitigation of sentence.

An adult offender proceeded with by indictment faced an average sentence of 15.72 months in jail. A jail sentence was imposed in about 9 out of 10 adult convictions. If a period of probation was part of the sentence, the offender spent an average of 16.2 months on probation. Generally, sentences imposed in the Supreme Court tended to be harsher than those in the Territorial Court, as this court usually hears the more serious cases.

An adult offender convicted of a summary conviction sexual assault (e.g. for a less serious offence) faced an average sentence of 3.25 months in jail and had a better than a 50-50 chance of not getting a jail sentence (e.g. receiving a fine and/or a period of probation).

Young offenders faced jail sentences averaging 6.7 months for serious offences and about 3 months for less serious ones.

Less than 1 in 4 sentence appeals by the prosecution or the defence succeeded.

8.0 STATISTICAL TABLES[6]

The following is a summary of available statistics representing 261 records of sexual assault data compiled from files created by the regional office of the Department of Justice, (Canada) during the period January 1, 1988 through December 31, 1989. Although there were 261 records, the number of offences considered in those 261 records was 291.

[6] The "unknown" content of data in the following Tables may be significant

TABLE 8.1 - Regional and Community Incidence of Sexual Assault Offences*

Inuvik Region	
Inuvik	26
Fort Norman	15
Tuktoyaktuk	8
Aklavik	9
Norman Wells	8
Fort McPherson	7
Fort Franklin	4
Fort Good Hope	3
Total	80

Keewatin Region	
Baker Lake	23
Rankin Inlet	9
Whale Cove	7
Arviat	6
Coral Harbour	2
Chesterfield Inlet	1
Total	48

Fort Smith Region	
Yellowknife	19
Hay River	14
Fort Smith	10
Fort Simpson	7
Fort Providence	5
Fort Resolution	4
Pine Point	4
Rae-Edzo	3
Fort Wrigley	3
Fort Liard	1
Lac La Martre	1
Trout Lake	1
Total	72

Baffin Region	
Iqaluit	19
Igloolik	7
Arctic Bay	6
Hall Beach	6
Sanikiluaq	6
Pangnirtung	5
Pond Inlet	5
Cape Dorset	4
Broughton Island	3
Lake Harbour	1
Grise Fjord	1
Nanasivik	1
Total	64

Kitikmeot Region	
Cambridge Bay	14
Coppermine	7
Spence Bay	4
Gjoa Haven	2
Total	27

Total number of offences 291

*This data may include multiple offences by one offender.

TABLE 8.2 - Indication of Alcohol Use by the Accused and Complainant

	Accused	Complainant
No indication of use:	69 (26.03% of total)	130 (48.14%)
Use preceding sexual assault:	140 (53.63%)	73 (27.03%)
(* intoxication:	71 = 27.20%	52 = 19.92%)
Unknown:	52	67
Total	261	270

*category of alcohol use includes category of alcohol use to point of intoxication

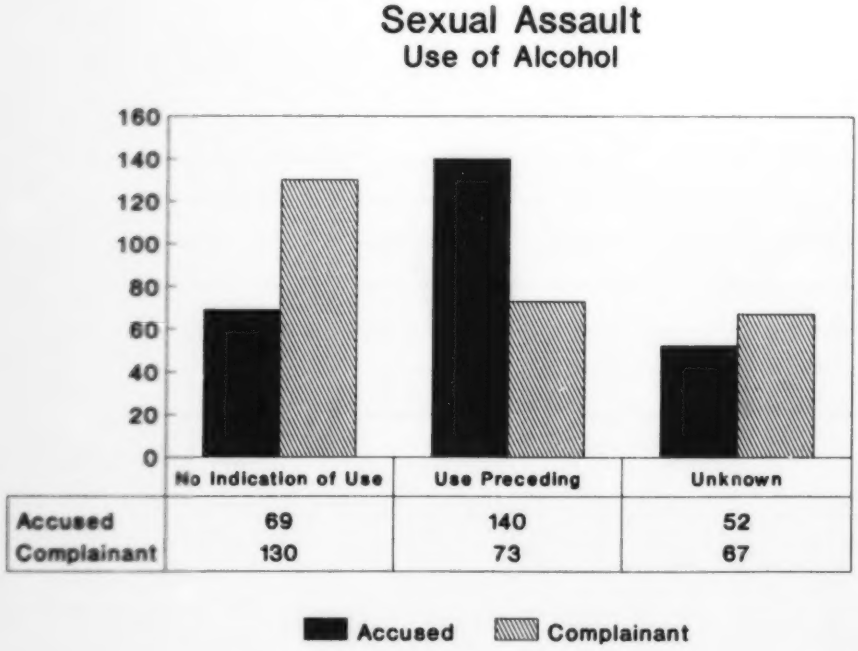

TABLE 8.3 - Marital Status of Accused and Complainant

	Accused	Complainant
Single *	130 (49.80%)	201 (74.44%)
Married	64 (24.52%)	11 (16.66%)
Common-law	21	9
Separated	3	1
Divorced	2	0
Widowed	1	1
Unknown	40	47
Total	261	270

*includes child victims

TABLE 8.4 - Employment of Accused and Complainant

	Accused	Complainant
Unemployed (65.77% of known data)	98	11
Employed (34.22% of known data)	51	17
Unknown	112	102
Child or student*	0	140 (51.85%)
Total	261	270

* data not available for the accused

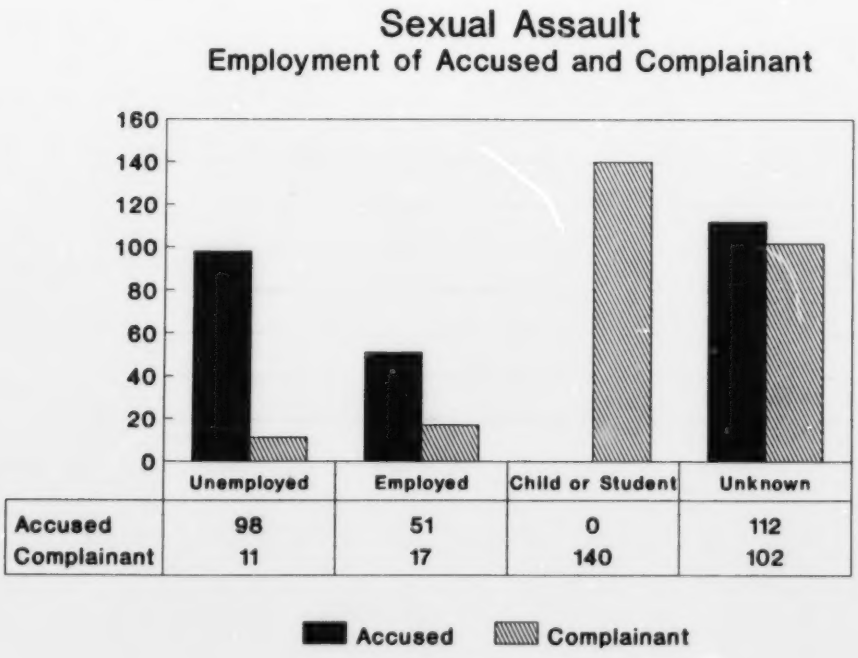

TABLE 8.5 - Education of Accused and Complainant

	Accused	Complainant
Grades 1-8 (68.21% of known data)	88	39
Grades 9-12 (24.03% of known data)	31	1 with university degree
No formal education	5	
Mentally disabled	5	6
Known data	129	46
Unknown data	132	224
Total	261	270

TABLE 8.6 - History of Past Victimization Characterized as Sexual Abuse, Parental Alcohol or Physical Abuse of Accused and Complainant

	Accused	Complainant
Sexual abuse	16	52
Parental alcohol abuse	18	0
Physical abuse	24	4
No past victimization	61	9
Unknown	148	205
Total *	267	270

*the data for each represents, in some cases, multiple kinds of abuse, so the total numbers of types of abuse do not correspond with the numbers of offenders or victims.

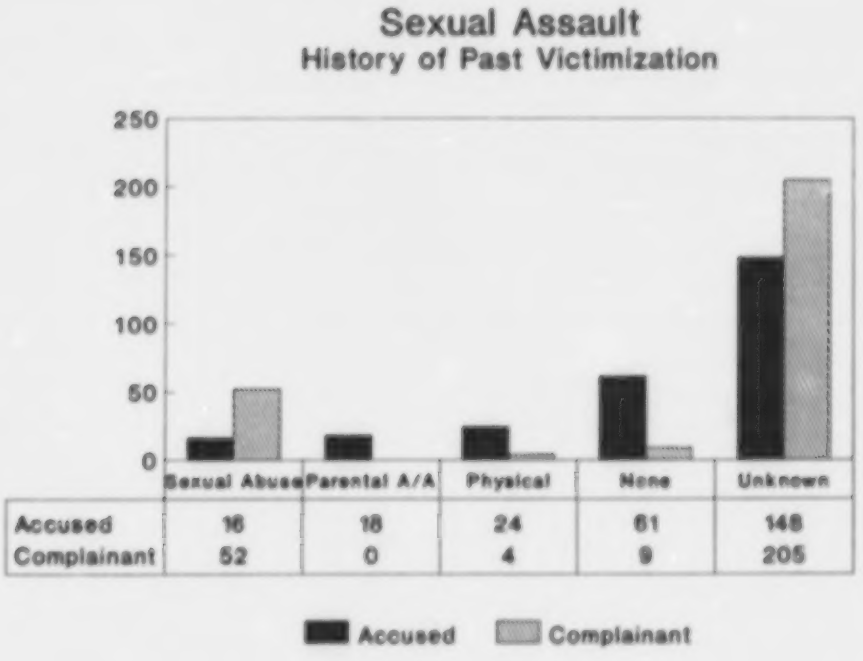

TABLE 8.7 - Age Distribution of Complainants

Age	No. Complainants
0 - 6	30 = 11.11%
7 - 12	69 = 25.55%
13 - 18	77 = 28.51%
19 - 24	37 = 13.70%
25 - 30	20 = 7.40%
31 - 36	8
37 - 42	5
43 - 48	2
49 - 54	2
55 - 60	2
64 yrs	1
85 yrs	1
Unknown	16
Total	270

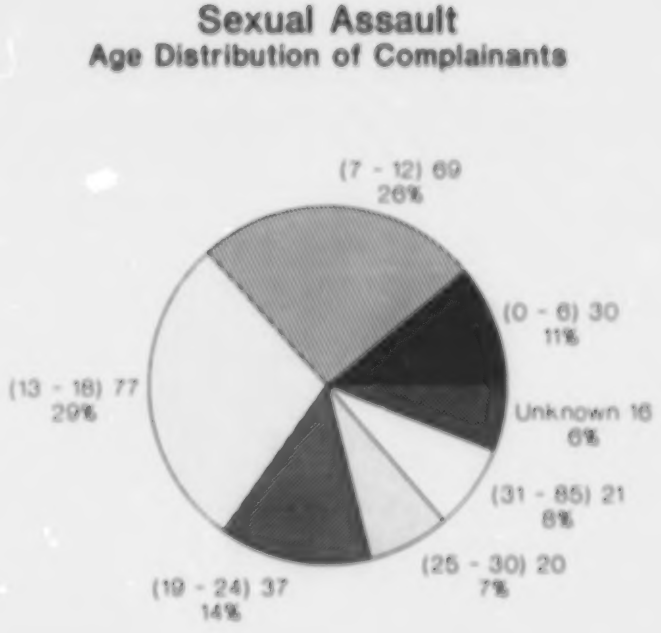

TABLE 8.8 - Time of Day of Incidents

Time A.M.	No. of Records	Time P.M.	No. of Records*
Midnight - 1:00	5	noon - 1:00	1
1:00 - 2:00	9	1:00 - 2:00	3
2:00 - 3:00	12	2:00 - 3:00	3
3:00 - 4:00	8	3:00 - 4:00	3
4:00 - 5:00	15	4:00 - 5:00	4
5:00 - 6:00	10	5:00 - 6:00	0
6:00 - 7:00	13	6:00 - 7:00	7
7:00 - 8:00	3	7:00 - 8:00	2
8:00 - 9:00	2	8:00 - 9:00	4
9:00 - 10:00	2	9:00 - 10:00	8
10:00 - 11:00	1	10:00 - 11:00	2
11:00 - noon	1	11:00 - midnight	5
Total 81		Total 42	

* Total of 123 records out of 261 contained reference to time of day.

TABLE 8.9 - Location of Sexual Assaults

Home of the complainant	85 = 32.56%
(Complainant's bedroom at home	73 = 27.96%)
Home of the accused	52 = 19.92%
(Accused' bedroom at home	33 = 12.64%)
Common domicile, complainant & accused	34 = 13.02%
Home of 3rd person	29 = 11.11%
Outdoors	28 = 10.72%
Public place	16 = 6.13%
Vehicle	6
At place of employment of either	3
Multiple locations	3
Unknown	5
Total	270

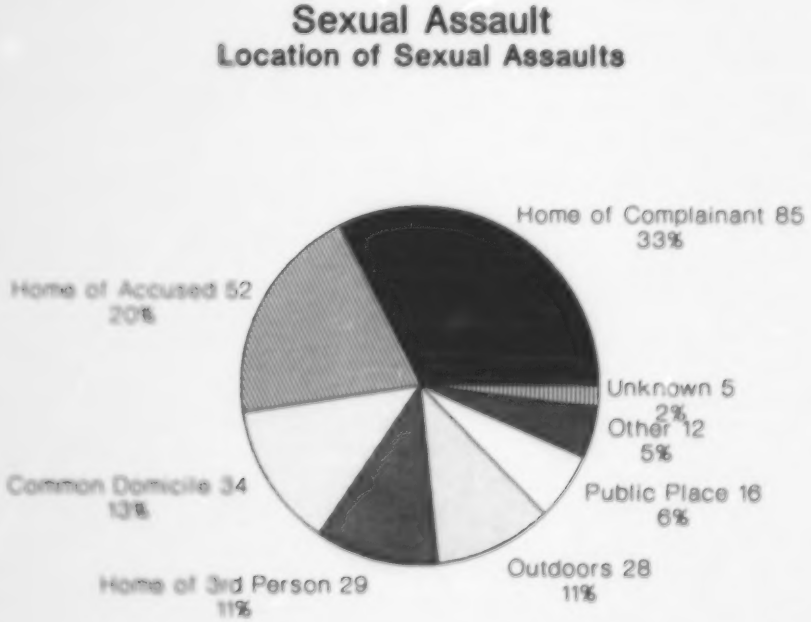

TABLE 8.10 - Activity of Complainant Immediately Before Time of Offence

Sleeping	98 = 36.29%
Walking outside	24 = 8.88%
Partying/drinking	20 = 7.40%
Visiting	20 = 7.40%
In a public place	9 = 3.33%
In vehicle	4 = 1.48%
Unknown	40 = 14.81%
Various other activities	55 = 20.37%
Total	270

TABLE 8.11 - Incidence of Threats to Complainants Made at the Time of the Offence

	Verbal	Non-Verbal*
Threats made	67 (24.81%)	24*
No threats made	181	47
Unknown	22	199**
Total	270	270

* threatened use of physical force or a weapon; no firearms were found to have been used as weapons in this survey; knives appeared in 6 reports and other objects used as weapons such as blankets, pillows, gravel, sticks and a wooden club comprise 18 reports;

** from the available data, non- verbal threats without a weapon could not be distinguished from implied threats.

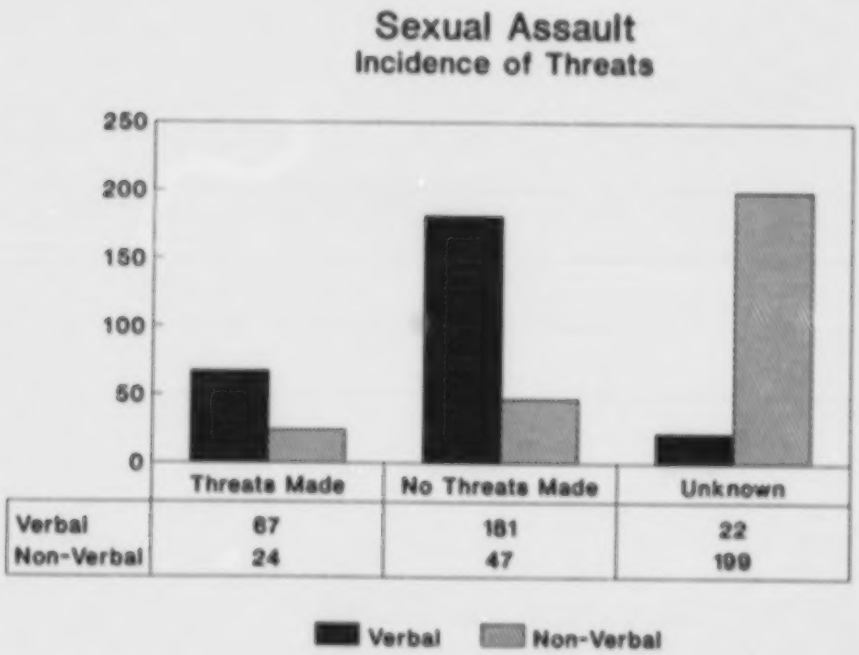

TABLE 8.12 - Typical Specific Threats Alleged to Have Occurred

Physical harm to complainant	36
Told not to tell	14
Physical harm to someone else	11
Threat of mental anguish **	10
Threat to kill	5
Physical harm to complainant and others	4
Mental anguish to others	2
Total ***	82

** generally threats to "blacken" the complainant's or the complainant's family's name

*** multiple threat assaults included

TABLE 8.13 - Relationship of Accused to Complainant

Acquaintance	64 = 24.52%
Friend (of complainant and/or family)	68 = 26.05%
Non-immediate family (cousin/uncle etc.)	44 = 16.85%
Fathers (natural,step and adoptive)	22 = 8.42%
Immediate family (blood)	9 = 3.44%
Accused is babysitting complainant	13 = 4.98%
Complainant is babysitter	3 = 1.14%
Former or present boyfriend/spouse	12 = 4.59%
No particular relationship	19 = 7.27%
Unknown	7
Total	261

TABLE 8.14 - Evidence of Physical Injury* to Complainant

None indicated in database	175 = 66.03%
Some injury indicated	63 = 23.77%
Unknown	27 = 10.18%
Total**	265

* injuries variously described as bruising to various parts of the body, pulling hair, lacerations and infections.

** total number does not correspond with number of victims because some records deal with multiple victims

TABLE 8.15 - Sexual Assault by Criminal Code Section

Section 271:	(Sexual Assault)	264
Section 272:	(Sexual Assault with weapon, causing bodily harm or threats to a third party)	15
Section 273:	(Aggravated Sexual Assault)	3
Unknown:		9
Total		291 records

(Note: See Description of offences at 3.0)

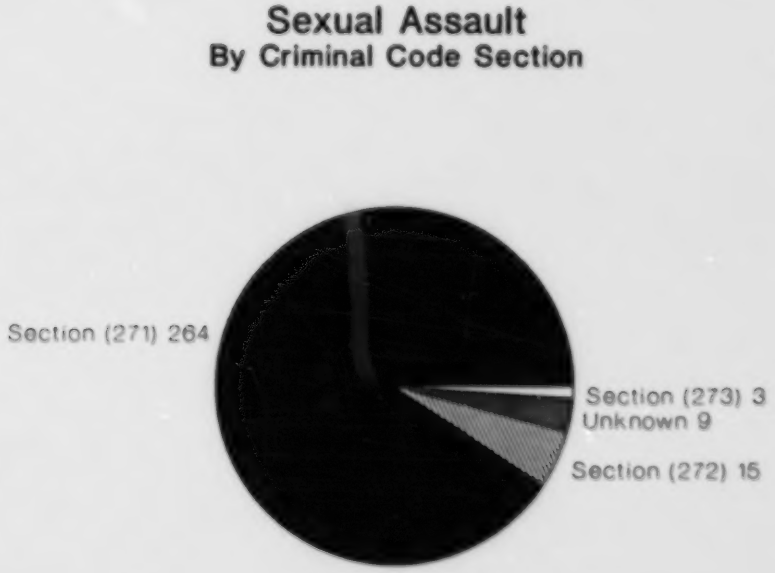

TABLE 8.16 - Breakdown of Sexual Assaults by Type of Activity

Intercourse	76 = 29.11%
Attempted intercourse	19 = 7.27%
Other forms of sexual assault	166 = 63.60%
Total	261

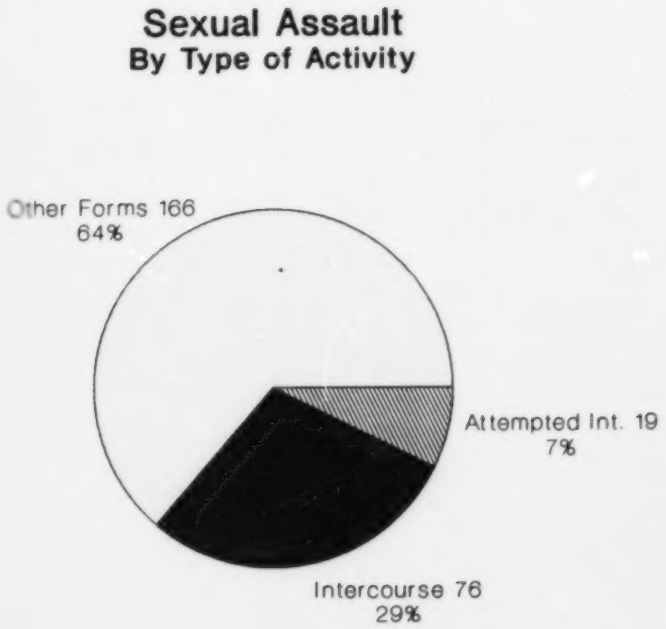

TABLE 8.17 - Incidence of Sexual Assaults Involving More Than One Accused/Offender

There were six such cases. Two cases involved young offenders and four involved adult offenders. In the four cases involving adults, all offenders were convicted and sentences ranged between two to four years imprisonment.

TABLE 8.18 - Responses of Complainants to the Sexual Assaults

Passivity	70 = 24.13%
Fighting/physical resistance	68 = 23.44%
Telling accused to leave/stop	55 = 18.96%
Crying	36 = 12.41%
Complainant left or tried to leave	19 = 6.55%
Unknown	42 = 14.48%
Total *	290

* included multiple responses in some cases, such as resistance followed by passivity.

TABLE 8.19 - Possible Indicators of Trauma Experienced

Yes	63	23.33% of total files
No	39	14.44% of total files
Unknown	164	
Total	270	

Trauma expressed as:

Fear - various, including: of accused, of telling my story, of pregnancy, of boys and strangers, of reprisal, of parents, of going home) Total: 21 of 153 cases or 13.72%

Guilt - Total: 5 of 153 cases or 3.26%

Feeling dirty and ashamed - 2 cases

Embarrassed - 1 case

Trauma described by others as:

"confused and distraught": 4 cases

"in shock": 3 cases

"seriously traumatized": 2 cases

Other possible indicators of trauma: 25

TABLE 8.20 - Incidence of Arrest and Judicial Interim Release (Bail)

Accused taken into custody by police:	182 records (of 261)
Accused subsequently released before trial:	136
Accused kept in custody until trial:	37
Arrested accused, status unknown:	9

TABLE 8.21 - Incidence of Pleas

Guilty	151 = 57.85%
Not guilty	83 = 31.80%
Other*	27
Total	261

*disposed of before plea (Stay of Proceedings, Withdrawn, etc.)

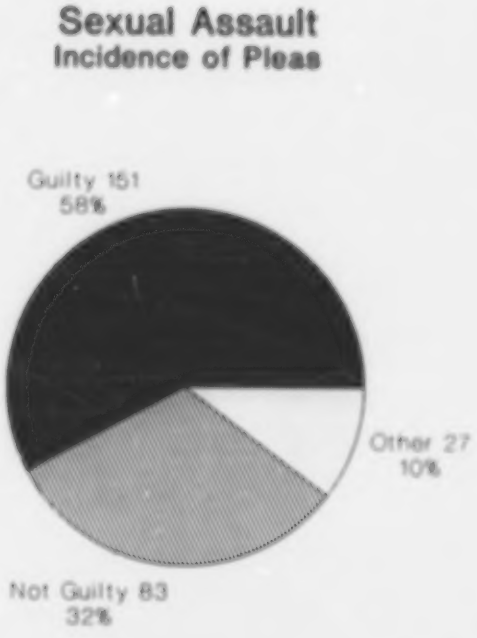

TABLE 8.22 - Disposition of Not Guilty Pleas

Eventual acquittal:	29
Eventual conviction:	40
Stay of Proceedings after plea:	7
Withdrawn after plea:	4
Unknown:	3
Total	83

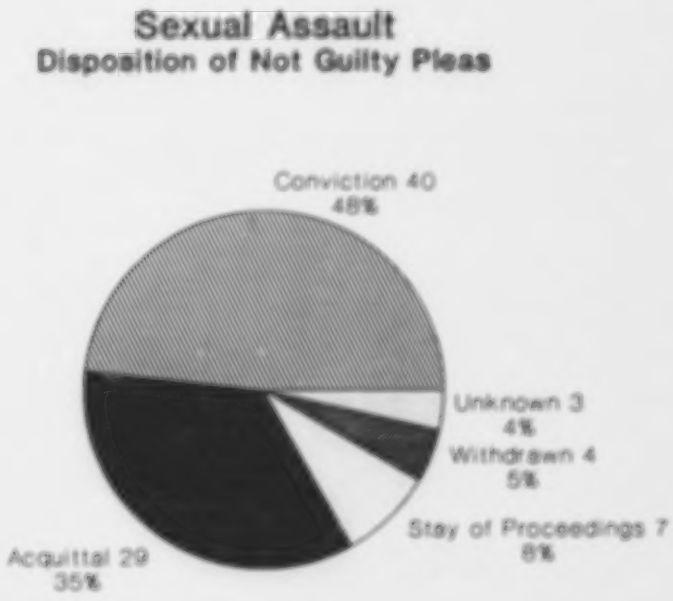

TABLE 8.23 - Distribution of Summary and Indictable Proceedings

	Adult Courts	Young Offenders
Indictment	163	28 = 73.18%
Summarily	29	9 = 14.55
Discharged at preliminary inquiry	2	
Stay of proceedings	12	
Unknown	18	
Total	224 + 37	= 261

TABLE 8.24 - Distribution of Charges by Method of Trial

Supreme Court Judge and Jury:	35	13.40%
Supreme Court Judge alone:	42	16.09
Territorial Court Judge:	155	59.38
Unknown:	29	11.11
Total	261	

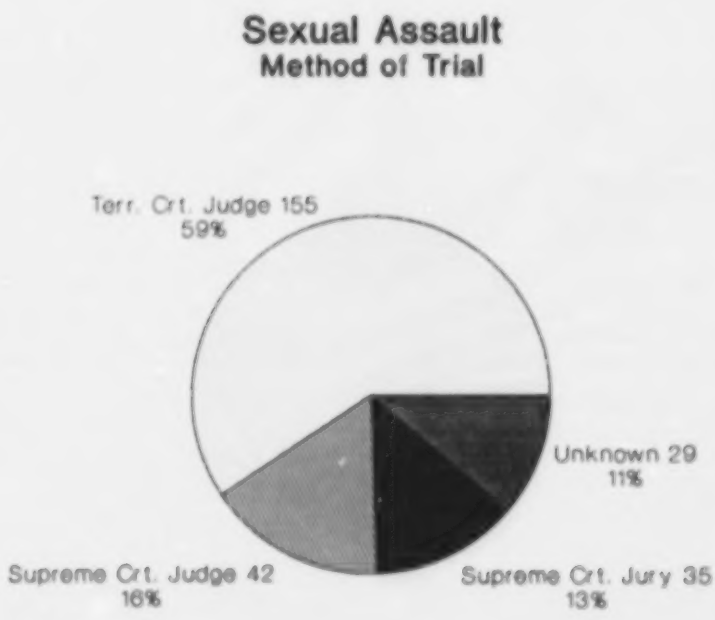

TABLE 8.25 - Defence Strategies Employed

Credibility of complainant's evidence	19
Accused had honest mistaken belief that complainant gave consent	5
Alibi	4
Insufficient i.d. of accused	3
Combination of consent and credibility of complainant	3
Fabrication of story by complainant	1
No criminal intent	1
Total known	36
Unknown	47
TOTAL	83

TABLE 8.26 - Offenders' Previous Convictions Involving Violence

No. accused with previous convictions (violence)	88 (33.71%)
No. previous convictions for these 88 accused	210
No. Accused w prev. sexual offence convictions	31
No. prev. sexual offence convictions for 31 accused	41
No. accused with more than 1 previous sexual offence conviction	13

TABLE 8.27 - Sentencing Principles Specifically Mentioned in Judgments

General deterrence to would-be offenders:	35
Protection of the public:	28
Public denunciation of the conduct of offender:	28
Specific deterrent effect on offender:	25
Rehabilitation of the offender:	24
Total:*	175

* Often, more than one principle was mentioned in passing sentence. However, sentencing remarks were not always available to the researchers.

TABLE 8.28 - Aggravating Factors Specifically Mentioned in Judgments

Breach of trust of complainant	22
Vulnerability of the complainant	17
Previous violent criminal record	16
Violence or injury perpetrated on complainant	15
Described as a "major sexual assault"	14
Youthful age of complainant	9
Evident lack of remorse	7
Evident trauma of complainant	6
More than one assault occurring	6
Degrading or dehumanizing behaviour	5
More than one offender involved	4
On probation or bail at time of offence	4
Offender not respecting complainant's refusal	4
Location of assault in complainant's home	3
Complainant asleep	2
Use of a "weapon"	2
Premeditation, being a bad example to others and lack of community support for a restorative sentence and a consideration of the maintenance of the public confidence in the justice system	
Each:	1
Total:*	140

* In some cases, more than one aggravating factor was considered in passing sentence. However, sentencing remarks were not always available to the researchers.

TABLE 8.29 - Mitigating Factors Specifically Mentioned in Judgments

Guilty plea	27
1st offence	24
No violence or injury to complainant	20
Apparent remorse	16
Remand time	13
Spontaneous conduct	11
Age of the offender	11
Reputation as a good provider	9
In the process of rehabilitating	7
Gainfully employed or good emp. record	7
Described as a "minor sexual assault"	6
Totality	5
Loss of job and community respect	4
Complainant asking for restorative/rehab.consid	4
Alcoholism of offender	3
Described as "only a touching"	2
Disclosure	2
Offender previous complainant of sexual abuse	2
Section 100 (firearms prohibition) Order	2
Sophistication	
Financial Condition	1
Medical Condition	1
Education	1
Alcohol involved in conduct	1
One act only involved in conduct	1
Total *	181

* In some cases, more than one mitigating factor was considered, in passing of sentence, however sentencing remarks were not always available to the researchers.

TABLE 8.30 - Range of Dispositions Where Sexual Assault Proceeded With by Indictment

Young offenders

Average custodial disposition	6.7 months
Average length of probation*	11.35 months
Most severe custodial disposition	1 year secure custody
Incidence of custodial dispositions	85% of YOA sentences

Notes: No fines imposed alone or in addition to any other sentence.

There were only 3 cases where there was a disposition of probation alone, ranging from 6 months to 1 year.

Adults

Average length of jail sentence	15.72 months
Average length of probation	16.02 months
Most severe sentence	7 years imprisonment
Incidence of jail sentences	87.36% of adult sentences

* a period of probation may be imposed in addition to or in lieu of a jail sentence

TABLE 8.31 - Range of Sentences Where Sexual Assault Proceeded With Summarily

Young Offenders

Average length of jail sentence	3 months open custody
Average length of probation	12.5 months
Most severe sentence	2 months secure custody
Incidence of jail sentences	* 66.66%

* 4 of only 6 summarily proceeded YOA offences

Adults

Average length of jail sentence	3.25 months jail
Average length of probation	11.41 months
Most severe sentence	6 months jail
Incidence of jail sentences	* 45.45%
Most severe fine imposed	$1,250. each
Incidence of fines imposed	* 45.45%

* 10 of 22 summarily proceeded adult offences

TABLE 8.32 - Rate of Change of Sentences on Appeal

4 sentences of 17 appealed (9 by the defence, 8 prosecution) were changed: 23.52% Two sentence appeals by each of the prosecution and defence were successful.

BIBLIOGRAPHY

In addition to the texts, reports and other materials footnoted in this report, the writer found numerous publications of particular explanatory interest. They are listed below. This does not represent a complete bibliography on the subjects of sexual assault or sentencing. The literature and studies dealing with both subjects are extensive.

Boyle, Christine L.M., 1984, Sexual Assault, Carswell, Toronto

Brownmiller, Susan, 1975, Against Our Will: Men, Women and Rape, Simon and Schuster, New York

Canadian Sentencing Handbook, 1982, the Canadian Association of Provincial Court Judges

Clark, Lorenne and Lewis, Debra, 1977, Rape: the Price of Coercive Sexuality, Women's Educational Press, Toronto

Cross, Sir Rupert, 1981, The English Sentencing System, Butterworth's, London, U.K.

Doob, Anthony N. and Roberts, Julian V., 1983, Sentencing, An Analysis of the Public's View of Sentencing, a report to the Dept. of Justice, Canada, Centre of Criminology, U of Toronto

Harding, Christopher and Koffman, Laurence, 1988, Sentencing and the Penal System, Sweet and Maxwell, London, U.K.

Lindsay-Peck, Patricia, 1985, Polarity in Sentencing, an Analysis of Sentencing Practices in the NWT (Unpublished), U of Windsor Faculty of Law, Windsor Ontario

Schwendinger, Julia and Herman, 1983, Rape and Inequality, Sage Publication, N.Y.

Stanko, Elizabeth, 1985, Intimate Intrusions, Routledge and Kegan Paul, N.Y.

Stuart, Don, 1987, Canadian Criminal Law, A Treatise, (2d) Carswell, Toronto

Smart, J. Brennan, 1989, Crime and Punishment in the NWT, The Sentencing of Native Offenders in Canada's North, U of Windsor Faculty of Law, Windsor Ontario

Tallis, Mr. Justice C.F., Sentencing in the North, 1979, an address delivered to members of the legal profession at Yellowknife, Court House Library, Yellowknife, NWT

APPENDIX A

1. Community _____ Research number _____

2. Offence(s) ☐ Section charged _____

☐ Summarily ☐ Indictment ☐ Young Offenders Act

3. Unfounded Complaint ☐ _____

4. Date of Offence or complaint _____ _____ _____ _____

(day) (mo) (year) (time)

Between _____ _____ _____

5. Location of event(s) ☐ home ☐ victim ☐ bedroom

☐ vehicle ☐ accused ☐ living room

☐ other ☐ kitchen

☐ bathroom

☐ porch

☐ other

☐ public building ☐ bar ☐ other ☐ place of employment

☐ other building ☐ outside location

☐ other location

6. Circumstances victim & accused in same location

Accused is ☐ invited guest ☐ other

Victim is ☐ invited guest ☐ other

Victim lured/coerced to place of offence ☐ yes ☐ no ☐ n/k

7. Number of victims in this incident ☐

Number of accused in this incident ☐

☐ Single or ☐ Multiple occurences

Over a period of ☐ days ☐ weeks ☐ months ☐ years

8. Activity of Victim at time of offence

☐ partying/drinking ☐ sleeping ☐ babysitting
☐ walking outside ☐ being in a public place
☐ personal hygiene ☐ watching TV/other solo leisure activity
☐ working _____ ☐ other (specify) _____

_____

9. Description of event(s): _____

_____

_____

_____

_____

10. Verbal threat(s): ☐ yes ☐ no ☐ n/k
☐ physical harm to victim ☐ psychological harm to victim
☐ physical harm to others ☐ psychological harm to others

11. Non-verbal threat(s): ☐ yes ☐ no ☐ n/k
☐ with weapon ☐ gun ☐ knife ☐ stick ☐ rope ☐ other
specify _____
☐ without weapon ☐ gesturing ☐ slapping ☐ punching
☐ hitting ☐ grabbing ☐ kicking ☐ choking ☐ pulling hair
☐ pinching ☐ pulling on clothes ☐ suffocating ☐ wrestling
☐ biting ☐ other (specify) _____

12. Eyewitness(es) ☐ yes ☐ no ☐ n/k

13. Intervention by third party ☐ yes ☐ no ☐ n/k

14. Type of act:

☐ attempted intercourse ☐ intercourse ☐ multiple acts
☐ touching ☐ grab/squeeze ☐ breasts ☐ buttocks ☐ genitals
☐ fellatio ☐ cunnilingus ☐ buggery ☐ finger penetration
☐ use of foreign object ☐ forced masturbation ☐ forced kiss
☐ genital contact ☐ forced exposure of C's genitals
☐ ejaculation onto C's body ☐ other _____

15. Victim's response ☐ screams ☐ crying ☐ calling for help
☐ fighting ☐ running ☐ passivity ☐ counter threats
☐ other _____

16. Relationship between accused & compl._____

17. *Evidence of physical injury ☐ yes ☐ no ☐ n/k
_____

18. Evidence of psychological trauma_ ☐ yes ☐ no ☐ n/k
_____

19. Evidence of alcohol use preceeding event by:
Accused ☐ yes ☐ no ☐ intoxicated ☐ n/k
Complainant ☐ yes ☐ no ☐ intoxicated ☐ n/k

20. Evidence of substance use preceeding event by:
Accused ☐ yes ☐ no ☐ intoxicated ☐ n/k
Complainant ☐ yes ☐ no ☐ intoxicated ☐ n/k

*EVIDENCE IN THIS CONTEXT IS EVIDENCE ADMITTED INTO TRIAL/ SENTENCING/PRELIMINARY PROCEEDINGS, AND APPARENT FROM THE PRIMARY SOURCE (CROWN FILE) OR RECORDING SOURCES (COURT FILE)

Accused/Respondent

21. Age at time of offence: _____ ☐ male ☐ female

22. Date of birth: _____ (day) _____ (month) _____ (year) ☐ n/k

23. Ethnicity: _____ ☐ n/k Place of birth: _____

24. Interpreter/translator required ☐ yes ☐ no Language _____

25. Evidence of past victimization ☐ yes ☐ no ☐ n/k
    ☐ physical violence ☐ sexual abuse
    ☐ parental alcohol abuse ☐ other _____

26. Employment status:
    at time of event: ☐ unemployed ☐ employed ☐ n/k
    at time of trial ☐ unemployed ☐ employed ☐ n/k

27. Educational status: _____ ☐ n/k

28. Previous convictions involving violence ☐ yes ☐ no ☐ other

Violent Offence(s)	Conviction Date	Disposition

29. Marital status: ☐ single ☐ married ☐ divorced ☐ separated
    ☐ common-law ☐ widowed ☐ n/k

Complainant/Victim

30. Age at time of offence: _____ ☐ n/k ☐ male ☐ female

31. Date of birth: _____ (day) _____ (month) _____ (year) ☐ n/k

32. Ethnicity _____ ☐ n/k P.O.B. _____

33. Interpreter/translator req. ☐ yes ☐ no Language: _____

34. Employment status ☐ employed ☐ unemployed ☐ n/k _____

35. Educational status _____ ☐ n/k

36. Marital status ☐ single ☐ married ☐ divorced ☐ separated
☐ common-law ☐ widowed ☐ n/k

37. Chronology of complaint(s): ☐ n/k

Date	Time	Person/Agency

38. Evidence of past victimization ☐ yes ☐ no ☐ n/k
☐ physical violence ☐ sexual abuse
☐ parental alcohol abuse ☐ other _____

Court Proceedings

39. Arrested ☐ yes ☐ no ☐ n/k _____ (day) _____ (month) _____ (year)

40. Summonsed ☐ yes ☐ no _____

41. Judicial Interim Release ☐ yes ☐ no _____ (day) _____ (month) _____ (yr)

42. J.I.R. Process & Conditions: _____

_____

43. Plea: ☐ guilty ☐ not guilty

44. Preliminary Inquiry: ☐ yes ☐ no _____ (day) _____ (month) _____ (year)

☐ C.F.T. ☐ discharged

If discharged, reason(s) _____ ☐ n/k

45. Mode of trial: ☐ T.C.J. ☐ S.C.J. ☐ J.& J. _____ (code)

46. Representation of accused ☐ legal counsel ☐ courtworker

☐ other _____ ☐ none

47. Nature of defense ☐ consent ☐ i.d. ☐ n/k ☐ other _____

_____

_____

48. Testimony by accused ☐ yes ☐ no ☐ n/k _____

49. Confession tendered ☐ yes ☐ no ☐ n/k

☐ admitted ☐ inadmissable

50. Court Disposition: ☐ stay of proceedings ☐ acquital

☐ conviction

_____ (day) _____ (month) _____ (yr)

Reasons _____ ☐ n/k

_____

Sentence

51. Pre-Sentence report ☐yes ☐no Recommendation:_____

_____

52. Psych report ☐yes ☐no Recommendation: _____

_____

53. Character evidence ☐yes ☐no Nature: _____

_____

54. Community support evidence ☐yes ☐no Nature: _____

_____

55. Prosecutor's suggested sentence: _____

_____ ☐n/k

56. Sentence(s) imposed: _____ _____ _____
(day) (month) (year)

Section Disposition

57. Section 100 Order ☐yes ☐no _____

58. Disposition of other charge(s):

Section Disposition

59. Sentencing Remarks ☐yes ☐no ☐n/k

Considerations: ☐denunciation ☐rehabilitation
☐specific deterrence ☐general deterrence
☐protection of the public ☐other _____

_____

60. Mitigating factors: ☐guilty plea ☐remorse ☐disclosure
☐first offence ☐spontaneous act ☐other_____

_____

61. Aggravating factors: ☐no remorse ☐criminal record
☐premeditation ☐breach of trust ☐vulnerability
☐degrading/dehumanizing behavior ☐other _____

_____

62. Other: (e.g. cases cited) _____

_____

_____

_____

Appeals

63. Crown: ☐sentence ☐conviction _____(day) _____(month) _____(year)

64. Defendant: ☐sentence ☐conviction _____(day) _____(month) _____(year)

65. Result: ☐allowed ☐dismissed _____(day) _____(month) _____(year)

66. Reasons/Remarks _____

_____

_____